IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 582 OF 2001

IN

WRIT PETITION NO. 2443 OF 2000

1. Shri Shantaram Pandurang Jadhav)
Vinayak Nagar, 3 Dongari,)
Unnat Nagar, Goregaon (West))
Mumbai 400 062.)

2. Shri Vinayak Sonu Bhovad)
R.No.3141, Motilal Nagar No.3,)
Aadivashi Society, Bangur Nagar)
Goeregaon (West), Mumbai 400 090)

3. Rajaram M.Jadhav,)
3/217 Sane Guruji Nagar,)
Goregaon (West), Mumbai 400 062.)

4. Shri Govind P. Kate)
Yashwant Nagar, 3 Dongri)
Opp. 12 No. Block Shive Tekadi,)
Goregaon (West), Mumbai 400 062.)

5. Shri Vishram Shankar Sherlekar)
367-2943, Moti Nagar,)

Goregaon (West),)
Mumbai 400 096.)..Appellants
(Org.Respondents Nos.2 to 6)

Versus

Kiran Industrial Premises Co-op.Soc.Ltd)
"A", 2nd Floor, M.G.Road,)
Goregaon (West), Mumbai 400 062.)..Respondent
(Org. Petitioner)
(org. petitioner)

Mr. A.D.Shetty with Ms. K.R.Joshi for the appellants.
Mr. K.D.Jha for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 29th August, 2007.

P.C.

1. By this Appeal, the appellants challenge the order dated 8th March, 2001 passed in Writ Petition No. 2443 OF 2000 passed by a learned Single Judge. By that order, the Writ Petition filed by the respondent - Co-operative Society was allowed. The Respondent-Co-operative society had filed the Petition

challenging the order dated 25th September, 2000 passed by the Industrial Court in Complaint (ULP) No.621 of 1995. That complaint was filed by the present appellants claiming that the respondent-Co-operative Society is guilty of unfair labour practices defined by clauses 1(a), 1(b) and 6 of Schedule II and item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The complaint was decided by the Industrial Court by order dated 25.9.2000. Before the Industrial Court, an objection was raised to the maintainability of the complaint. That objection was overruled by the Industrial Court and a finding was recorded that the respondent is guilty of unfair labour practice under item 9 of Schedule IV of the Act and certain directions were issued in favour of the complainant. That order was challenged before the Single Judge of this Court. The learned Single Judge reversed the finding of the Industrial Court on maintainability of the complaint and held that the complaint is not maintainable before the Industrial Court under the Act. Consequently, he set aside the order of the Industrial Court and dismissed the complaint filed before the Industrial Court. The present appeal is directed against that order of the learned Single Judge.

2. We have heard learned Counsel appearing for the appellants at length. It is not in dispute before us that the respondent is a Co-operative Society registered under the Maharashtra Co-operative Societies Act and that it has employed only four persons as watchmen. The Society also employed two clerks. The Society has several commercial premises society wherein different kinds of commercial and trading activities are carried on by the members of the Society. The Society is registered as a commercial premises society. The units are held by the persons who are members of the Society. The commercial activities that are carried on by the members are maintained by the members and not by the Society. The only work of the Society is to maintain its building and the watchmen were engaged by the Society who were complainants before the Industrial Court to protect its building. Admittedly, the complaint was filed by the appellants under the MRTU & PULP Act alleging that the respondent-Society is guilty of unfair labour practice defined by item 9 of Schedule IV. The power of the Industrial Court to entertain a the complaint is to be found in Section 30 of the Act. It is that Section which empowers the Industrial Court and the Labour Court to issue various directions after recording a finding that the person named in the complaint is engaged in any of the unfair labour practices. The term "unfair labour practices" is

defined by the Act to mean "unfair labour practices as defined in section 26." Perusal of Section 26 shows that it lays down that the term "unfair labour practices" means any of the practices listed in Schedules II, III and IV. Perusal of Schedule II shows that it lists unfair labour practices on the part of the employer. Schedule III lists unfair labour practices on the part of Trade Unions and Schedule IV also lists unfair labour practices on the part of employers. The allegation in the complaint filed by the appellants was that the respondent-society has indulged in unfair labour practice defined by item 9 of Schedule IV which is failure to implement award, settlement or agreement. Therefore, it is clear that firstly, it will have to be established that the respondent is an employer within the meaning of the Act. The term "employer" is defined by Section 3(6) of the Act which reads as under :-

> "3(6) " employer", in relation to an industry to which the Bombay act applies, means an employer as defined in clause (14) of section 3 of the Bombay Act; and in any other case, means an employer as defined in clause (g) of section 2 of the Central Act;"

Perusal of the above quoted definition shows that the employer is essentially an industry either within the meaning of clause (14) of section 3 of the Bombay

Industrial Relations Act and, in any other case, clause (j) of Section 2 of the Industrial Disputes Act,1947. It is common ground that for our purpose, clause (14) of Section 3 of the Bombay Act is not relevant. Therefore, what is relevant is clause (j) of Section 2 of the Industrial Disputes Act. Thus, perusal of the above definition shows that the term "employer" has been defined with reference to an industry. Therefore, it is necessary that there should be an industry. The term "industry" is defined by Section 3(7) of the Act which reads as under :-

> "3(7) "industry" in relation to an industry to which the Bombay Act applies means an industry as defined in clause (19) of section 3 of the Bombay Act, and in any other case, means an industry as defined in clause (j) of section 2 of the Central Act;"

It is common ground that in this case, the Bombay Act does not apply and, therefore, what is relevant is clause (j) of Section 2 of the Industrial Disputes Act. Clause (j) of Section 2 of the Industrial Disputes Act reads as under :-

> "2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers

and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"

3. Insofar as Co-operative Societies are concerned, they were considered with reference to the provisions of Section 2(j) of the Industrial Disputes Act by the Constitution Bench of the Supreme Court in its judgment in the case of **Bangalore Water Supply and Sewerage Board** v**s. A. Rajappa, reported in 1978 Labour Industrial Cases 467.** The following observations from para 147 are relevant:-

"Co-operative societies ordinarily cannot, we feel, fall outside Section 2 (j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because Co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies - credit societies, marketing

> co-operatives, producers' or consumers' societies or apex societies - are industries."

The Supreme Court again considered the same question as also the Judgment of the Constitution Bench in Bangalore Water Supply case, referred to above, in its judgment in the case of **Management of SOM Vihar Apartment Owners Housing Maintenance SocietyLtd. And Workmen C/o. Indian Engineering and General Mazdoor.** The observations made by the Supreme Court in para 7 of its Judgment are relevant. They read as under :-

> "7. Indeed this Court in Rajappa's case (supra) noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition 2(j) of the Industrial Disputes Act. It is made clear if literally interpreted these words are of very wide amplitude and it cannot be suggested that in its sweep it is intended to include service however rendered in whatsoever capacity and for whatsoever reasons. In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; service rendered by a domestic servant purely in a personal or domestic matter or even in a

casual way would fall outside the definition. That is how this Court dealt with this aspect of the matter. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer who come outside the idea of industry and industrial dispute. This rationale which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat owners for rendering personal services even if that group is not amorphous but crystalsed into an Association or a society. The decision in Rajappa's case (supra) if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters. It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be

held not to be "industry". Therefore, the award made by the Tribunal cannot be sustained. The same shall stand set aside."

Perusal of the above observations of the Supreme Court shows that when employees are engaged by a co-operative society for the purpose of rendering personal service to the members of the society, the activity of the society cannot be termed as an industry and the employees also cannot be termed as workmen for the purpose of Industrial Disputes Act. Thus, perusal of the Judgment of the Supreme Court in the case of Management of SOM Vihar Apartment Owners Housing Maintenance Society Ltd.,makes it clear that when employees are engaged by a co-operative society for providing personal service to its members, the activity does not amount to an industry. In the present case, it is common ground that watchmen have been engaged just to protect the building which belongs to the society wherein various activities are carried on by the members of the society. It is, thus, clear that the employees have been engaged by the society for providing personal service to its members and, therefore, the respondent - co-operative society cannot be termed as an industry. As the respondent cannot be termed as an industry, then it cannot be termed as an employer for the purpose of unfair labour practice and, therefore, it cannot be held that it is

guilty of any of the unfair labour practices which can be committed only by an employer. In this view of the matter, therefore, it is clear beyond doubt that the learned Single Judge was perfectly justified in holding that the complaint filed by the appellants under the unfair labour practice was not maintainable.

4. In this view of the matter, therefore, we see no reason to interfere with the order of the learned Single Judge. However, we find that in para 6 of the Judgment, the learned Single Judge has issued certain directions to the State Government. The learned Single Judge has directed the State Government to amend the relevant statutory provisions so that the employees working with the Co-operative Societies can be given protection of the labour law. Now, admittedly, the State Government was not a party to the petition. The directions contained in para 6 are in the nature of mandamus issued by the High Court to the State Legislature to enact law. The law is that High Court cannot issue mandamus to legislate. The Constitution Bench of the Supreme Court has laid down this law clearly in its Judgment in the case of **A.K. Roy v. Union of India, AIR 1982 SC 710.** That judgment has been followed by the Supreme Court in its Judgment in the case of **Aeltemesh Rein, Advocate, Supreme Court of India vs. Union of India and others,** reported in AIR 1988 SC 1768. We find that the

directions contained in para 6 are in the nature of mandamus to legislate which the High Court does not have power to issue and, therefore, in our opinion, the learned Single Judge was not justified in issuing those directions. Thus, though the Appeal is dismissed, the directions contained in paras 6 and 7 of the Judgment are set aside.

The Appeal disposed of.

5. In view of the order in Appeal, the Notice of Motion No.2748 of 2001 stands disposed of.

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(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)